

ORIGINAL

BANNING MICKLOW & BULL LLP  
Edward M. Bull III, SBN 141996  
Eugene A. Brodsky, SBN 36691  
Jessica L. Voss, State Bar No. 247033  
501 West Broadway, Suite 2090  
San Diego, California 92101  
Telephone: (619) 230-0030  
Facsimile: (619) 230-1350

Attorneys for Plaintiff  
Lester A. Scanlan

FILED

2008 MAY 22 PM 4:43

CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY YHX DEPUTY

FILED

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LESTER A. SCANLAN

Plaintiff,

vs.

CAVANAUGH SPORTFISHING, INC.,  
BILL CAVANAUGH and DOES 1-10, *in*  
*personam*, and FV PACIFIC QUEEN,  
and her engines, tackle, apparel, etc., *in*  
*rem*,

Defendants.

CASE NO. **08 CV 0915 IEG CAB**  
IN ADMIRALTY

**PLAINTIFF'S COMPLAINT FOR  
NEGLIGENCE UNDER THE  
GENERAL MARITIME LAW  
DEMAND FOR JURY TRIAL**

**INTRODUCTORY ALLEGATIONS**

1. Plaintiff LESTER A. SCANLAN ("Plaintiff") brings and maintains this action based upon the General Maritime Law pursuant to the United States Constitution, Article III, Section 2, and 28 U.S.C. Section 1333, and this is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. Plaintiff LESTER A. SCANLAN is a citizen of the United States and is a resident of Marin County, California, and was at all relevant times a lawful passenger

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Case No.

1 for hire aboard the commercial sports fishing vessel F/V PACIFIC QUEEN  
2 ("PACIFIC QUEEN"). Plaintiff paid the compensation required to be paid by  
3 Defendants for transportation aboard the vessel.

4 4. At all time mentioned herein Defendants CAVANAUGH  
5 SPORTFISHING, INC. and BILL CAVANAUGH owned, operated, maintained and  
6 chartered the F/V PACIFIC QUEEN, and maintained their principal place of business  
7 at Fisherman's Landing, 2838 Garrison Avenue, San Diego, California. Defendant  
8 CAVANAUGH SPORT FISHING INC., is a California corporation with it's  
9 principal office at 2838 Garrison St., San Diego, California. Defendant BILL  
10 CAVANAUGH is an individual, who, at all relevant times, was a resident of San  
11 Diego County and was Captain and of the F/V PACIFIC QUEEN during the course  
12 of its voyage on June 4, 2005.

13 5. At all times herein mentioned, the defendant PACIFIC QUEEN was  
14 operated afloat upon navigable waters of the Pacific Ocean. Plaintiff is informed and  
15 believes that PACIFIC QUEEN will be within this district during the pendency of this  
16 action. To the extent not immediately served (i.e. arrested pursuant to Rule C of the  
17 special Admiralty Rules), Plaintiff hereby reserves all rights to effectuate such service  
18 and to pursue any and all *in rem* claims that may sound against such vessel in this  
19 District Court arising out of the claims asserted herein at any time or otherwise if  
20 need should arise to obtain security for the satisfaction of such claims or to compel  
21 the attendance of any non-appearing *in personam* defendant. Any entities or persons  
22 with any ownership or security interest in such vessel are hereby put on notice of the  
23 assertion of a maritime lien against said vessel.

24 6. All *in personam* Defendants are residents of this state, have extensive  
25 contacts with this state, both specific and general, and/or have personally availed  
26 themselves of the benefits of doing business in this state and are thus subject to

1 personal jurisdiction within the State of California. The Defendants reside and are  
2 doing business in the Southern District of California and/or were doing business in  
3 this District at all relevant times, and all operative events giving rise to this action  
4 occurred in this District, rendering this a proper venue for the prosecution of this  
5 action.

6 7. Plaintiff is ignorant of the true names and capacities of the Defendants  
7 sued herein as DOES 1 through 10 and therefore Plaintiff sues these Defendants by  
8 such fictitious names. Plaintiff will amend the Complaint to allege their true names  
9 and capacities if and when ascertained. In the meantime, Plaintiff is informed and  
10 believes that each of the fictitiously-named Defendants are responsible in some  
11 manner for the occurrences herein alleged, and that Plaintiff's damages as herein  
12 alleged were legally caused by such Defendants.

13 8. Plaintiff is informed and believes that all of the Defendants, including  
14 those sued as DOES 1 through 10, were and are the agents, alter egos, partners, joint  
15 venturers, co-conspirators, principals, shareholders, servants, employers, employees  
16 and the like of their co-Defendants, and in doing the things hereinafter mentioned,  
17 were acting within the course and scope of their authority as such agents, alter egos,  
18 partners, joint venturers, co-conspirators, principals, shareholders, servants,  
19 employers, and employees and the like with the permission, ratification or consent of  
20 their co-Defendants and

21 **FIRST CAUSE OF ACTION**

22 **(General Maritime Law Negligence Against All Defendants**  
23 **and on Behalf of Plaintiff Lester A. Scanlan)**

24 9. Plaintiff incorporates by reference, as though fully set forth in like force  
25 and effect, all of the allegations contained in the previous paragraphs of this  
26

1 Complaint.

2 10. On or about the evening of June 3, 2005, plaintiff boarded the F/V  
3 PACIFIC QUEEN along with 31 other passengers, defendant Captain Cavanaugh and  
4 two deckhands, for a five day fishing trip. Upon departing San Diego, the PACIFIC  
5 QUEEN proceeded South to the fishing grounds off the Mexican Coast, with fishing  
6 to commence in the early morning hours of June 4, 2005.

7 11. At about 6:00 A.M. on June 4, 2005, the passengers, including Plaintiff,  
8 started fishing for albacore and other varieties of fish off the Mexican coast, and  
9 fishing activities continued all day. During the evening, but before darkness, the  
10 passengers were all directed and/or otherwise moved to the stern of the vessel to  
11 commence/continue fishing. Although the vessel was traveling through  
12 approximately eight foot swells, Captain Cavanaugh nonetheless turned the boat  
13 around, let it drift, and then went to the stern. Almost immediately the boat began to  
14 pitch and roll.

15 12. Plaintiff, after obtaining bait from the tank, again started to fish.  
16 Because the vessel was pitching and rolling, it was necessary for the Plaintiff and  
17 other fishermen to take a wide stance for balance and to be able to move their feet  
18 about the deck to accommodate for any unanticipated pitching and rolling.

19 13. The Captain and the two deckhand, who were standing behind the  
20 passengers who were all fishing, were aware, or should have known, that the lazarette  
21 and its hatch cover had been left unlatched and opened and presented an unreasonable  
22 risk of harm to the passengers, and should either have closed the lazarette or taken  
23 other steps to protect the passenger from this dangerous condition. However, they did  
24 not take any such steps and while Plaintiff was handling his rod and reel, the FV  
25 PACIFIC QUEEN pitched, and as Plaintiff stepped backwards for balance, his feet hit  
26

1 the open lazarette coaming, and he proceeded to fall backwards down a very steep  
2 steel ladder, causing he head to strike the forward bulkhead, causing serious and  
3 permanent injuries to his neck, lower back, head and hand.

4 14. Defendants under the circumstances owed Plaintiff a duty of reasonable  
5 care. Defendants breached their duty of care to Plaintiff and were then and there  
6 negligent for, among other reasons:

- 7 a. their failure to provide Plaintiff with a safe place to walk or stand  
8 under the circumstances;  
9 b. their failure to secure the lazarette and prevent passengers from  
10 falling and injuring themselves;  
11 c. their failure to exercise ordinary care under the circumstances to  
12 have the vessel, her crew and her training, work methods and  
13 equipment and gear in a seaworthy condition;  
14 d. their failure to warn of the danger of the open lazarette under the  
15 circumstances;  
16 e. their failure to keep passengers away from the the open lazarette  
17 under the circumstances, and  
18 f. their violation of laws, statutes and regulations enacted to promote  
19 safety at sea.

20 15. As a legal result of Defendants' negligence, Plaintiff sustained serious  
21 physical and emotional injuries, disfigurement and physical disability, all of which  
22 will be proven at time of trial.

23 16. As a further legal result of Defendants' negligence, Plaintiff has  
24 sustained and will continue to sustain special damages including, without limitation,  
25 past, present and future lost earnings, impairment of future earning capacity, medical  
26

1 expenses, and other out of pocket expenses, the exact amount of which will be proven  
2 at time of trial.

3 17. As a further legal result of Defendants' negligence, Plaintiff has  
4 sustained and will continue to sustain general damages including, without limitation,  
5 past, present and future damages for pain, suffering, mental anguish, emotional  
6 distress, discomfort, inconvenience, disability, disfigurement, loss of use and  
7 enjoyment of his usual activities and life's pleasures, loss of enjoyment of life and  
8 fear of future medical consequences of his diagnosed condition, the amount of which  
9 will be established at trial according to proof.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them,  
12 as follows:

13 1. That process in due form of law, according to the practices of this  
14 Honorable Court in causes of admiralty and maritime jurisprudence, may issue  
15 against the FV PACIFIC QUEEN, her engines, tackle, apparel, etc., and that all  
16 persons having or claiming any interest therein be cited to appear and answer, under  
17 oath, all and singular, the matters alleged herein; that Plaintiff have a judgment for his  
18 damages aforesaid, with interest and costs; and that the FV PACIFIC QUEEN be  
19 condemned and sold to satisfy Plaintiff's judgment;

20 2. That process in due form of law according to the practice of this  
21 Honorable Court issue against the Defendants, citing them to appear and answer all  
22 and singular the matters aforesaid;

23 3. That Plaintiff may have judgment for his general, special and other  
24 allowable damages in an amount according to proof at trial;

25 4. That Plaintiff be awarded prejudgment interest on the amounts awarded;  
26

1           5.     That Plaintiff be awarded his costs of suit; and

2           6.     That Plaintiff be awarded such other and further relief as this Honorable  
3 Court deems just and proper.

4  
5 DATED: May 22, 2008

BANNING MICKLOW & BULL LLP

6  
7 By 

Edward M. Bull III  
Eugene A. Brodsky  
Jessica L. Voss

8  
9 Attorneys for Plaintiff  
LESTER A. SCANLAN

10  
11 DEMAND FOR JURY TRIAL

12 Plaintiff hereby demands a trial by jury in this action.

13 DATED: May 21, 2007

BANNING MICKLOW & BULL LLP

14  
15 By 

16 Edward M. Bull III  
Eugene A. Brodsky  
17 Jessica L. Voss

18 Attorneys for Plaintiff  
LESTER A. SCANLAN



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Lester A. Scanlan

(b) County of Residence of First Listed Plaintiff Marin County, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Edward M. Bull III, Banning Micklow & Bull LLP, 501 West  
Broadway, Ste. 2090, San Diego, CA 92101; (619) 230-0030

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## DEFENDANTS

Cavanaugh Sportfishing, Inc., Bill Cavanaugh and Does 1-10,  
in personam and FV PACIFIC QUEEN, in rem

County of Residence of First Listed Defendant San Diego, CA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

- |   |  |   |  |  |  |
|---|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance  | <input type="checkbox"/> 310 Airplane                          | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice         | <input type="checkbox"/> 610 Agriculture                                 | <input type="checkbox"/> 422 Appeal 28 USC 158                   | <input type="checkbox"/> 400 State Reapportionment                                     |
| <input type="checkbox"/> 120 Marine   | <input type="checkbox"/> 315 Airplane Product Liability        | <input type="checkbox"/> 363 Personal Injury - Product Liability        | <input type="checkbox"/> 620 Other Food & Drug                           | <input type="checkbox"/> 423 Withdrawal 28 USC 157               | <input type="checkbox"/> 410 Antitrust   |
| <input type="checkbox"/> 130 Miller Act   | <input type="checkbox"/> 320 Assault, Libel & Slander          | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 623 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 820 Copyrights                          | <input type="checkbox"/> 430 Banks and Banking   |
| <input type="checkbox"/> 140 Negotiable Instrument                                | <input type="checkbox"/> 330 Federal Employers' Liability      | <input type="checkbox"/> 370 Other Fraud                                | <input type="checkbox"/> 630 Liquor Laws                                 | <input type="checkbox"/> 830 Patent                              | <input type="checkbox"/> 450 Commerce  |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment    | <input checked="" type="checkbox"/> 340 Marine                 | <input type="checkbox"/> 371 Truth in Lending                           | <input type="checkbox"/> 640 R.R. & Truck                                | <input type="checkbox"/> 840 Trademark                           | <input type="checkbox"/> 460 Deportation   |
| <input type="checkbox"/> 151 Medicare Act   | <input type="checkbox"/> 345 Marine Product Liability          | <input type="checkbox"/> 380 Other Personal Property Damage             | <input type="checkbox"/> 650 Airline Regs.                               | <input type="checkbox"/> 861 HIA (1395f)                         | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations            |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle                     | <input type="checkbox"/> 385 Property Damage Product Liability          | <input type="checkbox"/> 660 Occupational Safety/Health                  | <input type="checkbox"/> 862 Black Lung (923)                    | <input type="checkbox"/> 480 Consumer Credit   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits        | <input type="checkbox"/> 355 Motor Vehicle Product Liability   |   | <input type="checkbox"/> 690 Other                                       | <input type="checkbox"/> 863 DIWC/DIWW (405(g))                  | <input type="checkbox"/> 490 Cable/Sat TV  |
| <input type="checkbox"/> 160 Stockholders' Suits                                  | <input type="checkbox"/> 360 Other Personal Injury             |   | <input type="checkbox"/> 710 Fair Labor Standards Act                    | <input type="checkbox"/> 864 SSID Title XVI                      | <input type="checkbox"/> 810 Selective Service   |
| <input type="checkbox"/> 190 Other Contract                                       |  |   | <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act      | <input type="checkbox"/> 865 RSI (405(g))                        | <input type="checkbox"/> 850 Securities/Commodities/Exchange                           |
| <input type="checkbox"/> 195 Contract Product Liability                           |  |   | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act      | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410                            |
| <input type="checkbox"/> 196 Franchise  |  |   | <input type="checkbox"/> 740 Railway Labor Act                           | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609         | <input type="checkbox"/> 890 Other Statutory Actions                                   |
| <input type="checkbox"/> 210 Land Condemnation                                    | <input type="checkbox"/> 441 Voting                            | <input type="checkbox"/> 510 Motions to Vacate Sentence                 | <input type="checkbox"/> 790 Other Labor Litigation                      |  | <input type="checkbox"/> 891 Agricultural Acts   |
| <input type="checkbox"/> 220 Foreclosure  | <input type="checkbox"/> 442 Employment                        | <input type="checkbox"/> 530 General                                    | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act                |  | <input type="checkbox"/> 892 Economic Stabilization Act                                |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                               | <input type="checkbox"/> 443 Housing/Accommodations            | <input type="checkbox"/> 535 Death Penalty                              |  |  | <input type="checkbox"/> 893 Environmental Matters                                     |
| <input type="checkbox"/> 240 Torts to Land  | <input type="checkbox"/> 444 Welfare                           | <input type="checkbox"/> 540 Mandamus & Other                           | <input type="checkbox"/> 462 Naturalization Application                  |  | <input type="checkbox"/> 894 Energy Allocation Act                                     |
| <input type="checkbox"/> 245 Tort Product Liability                               | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 550 Civil Rights                               | <input type="checkbox"/> 463 Habeas Corpus - Alien Detainees             |  | <input type="checkbox"/> 895 Freedom of Information Act                                |
| <input type="checkbox"/> 290 All Other Real Property                              | <input type="checkbox"/> 446 Amer. w/Disabilities - Other      | <input type="checkbox"/> 555 Prison Condition                           | <input type="checkbox"/> 465 Other Immigration Actions                   |  | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
|   | <input type="checkbox"/> 440 Other Civil Rights                |   |  |  | <input type="checkbox"/> 950 Constitutionality of State Statutes                       |

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity)

General Maritime Law Pursuant to U.S. Constitution, Article III, Section 2 and U.S.C. Sections 1333

Brief description of cause:

Passenger injured aboard commercial fishing vessel

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/22/2008

SIGNATURE OF ATTORNEY OF RECORD

Edward M. Bull III

FOR OFFICE USE ONLY

RECEIPT #

151213

AMOUNT

350.

APPLYING IFP

JUDGE

MAG. JUDGE

5/22/08

CP



**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 151213 - SR**

**May 22, 2008  
16:45:43**

**Civ Fil Non-Pris**

USAO #: 08CV0915 CIV. FIL.

Judge.: IRMA E GONZALEZ

Amount.: \$350.00 CK

Check#: BC#69063

**Total-> \$350.00**

FROM: SCANLAN V. SPORTFISHING, ET AL  
CIVIL FILING